

January 21, 2004

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Room TW-A325  
Washington, D.C. 20554

**Filed via Electronic Filing**

**Re: *Ex Parte* Presentation in the Proceeding Entitled "Nationwide  
Programmatic Agreement Regarding the Section 106 National Historic  
Preservation Act Review Process" – WT Docket No. 03-128**

Dear Ms. Dortch:

On Tuesday, January 20, 2004, the following individuals, representing the companies or associations indicated, met with officials of the Commission:

Ann Bobeck	National Association of Broadcasters
Connie Durcsak	PCIA
Andrea Bruns	PCIA
Andrea Williams	The Cellular Telecommunications and Internet Association ("CTIA")
John Clark –	Perkins Coie LLP – Counsel to the Wireless Coalition to Reform Section 106

The Commission officials attending the presentation were as follows:

Jeffrey Steinberg	Wireless Telecommunications Bureau ("WTB")
Dan Abeyta	WTB
Amos Loveday	WTB
Kris Monteith	Consumer and Governmental Affairs Bureau ("CGB")
Geoffrey Blackwell	CGB

At this presentation, Commission officials said that the purpose of the meeting was to familiarize representatives of the wireless industry with the Nationwide Programmatic

Agreement ("NPA") that is the subject of this proceeding, and particularly with the general impact of those sections of the NPA that will have been changed from the version in the Notice of Proposed Rulemaking ("NPRM"). The Commission officials discussed the schedule for the order that will adopt the NPA and the procedures that will be used to allow the Advisory Council on Historic Preservation ("ACHP") and the National Conference of State Historic Preservation Officers ("NCSHPO") to review and sign the final agreement.

The Commission officials described some of the provisions of the NPA and discussed generally how some of those provisions might differ from the NPRM version of the NPA. The Commission officials urged the industry representatives to make their views known to the Commission on these issues.

The Commission officials also discussed other matters not included in the proceeding, such as a set of "best practices" for tribal consultation procedures under Section 106 of the National Historic Preservation Act ("NHPA") currently being negotiated with the United South and Eastern Tribes ("USET"). The Commission officials described some of the provisions in the best-practices document that may be included in the NPA.

The representatives from industry expressed concerns about how some of the procedures in the best-practices document may pose commercial confidentiality concerns, and how other provisions may needlessly and unduly prolong the Section 106 process for new towers.

The representatives from industry also discussed the fact that House Resources Committee Chairman Richard Pombo and National Parks Subcommittee Chairman George Radanovich recently sent a letter (the "Pombo/Radanovich letter") to John Nau, Chairman of the ACHP with a copy to Chairman Michael Powell, expressing concern that ACHP's rules extended coverage of Section 106 to properties "only 'potentially eligible' for the National Register of Historic Places," and this change in federal law has "particularly burdened" the wireless telecommunications industry. "

The industry representatives expressed that ACHP and NCSHPO have signaled that they are interested in incorporating provisions in the NPA to address the potential eligibility problem outlined in the Pombo/Radanovich letter. The industry representatives also told the Commission officials that they are asking the

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Commission to delay adoption of the NPA one month to allow ACHP, NCSHPO and industry to develop provisions to do so.

Industry representatives offered to assist the Commission in any reasonable way to understand and address concerns that Indian tribes may have with any proposed resolution of the potential eligibility problem in the NPA.

Respectfully submitted,

John F. Clark  
Perkins Coie LLP  
Counsel to the Wireless Coalition to Reform Section 106

JFC:jfc